Supreme Court, U.S.
FILED

932097 JUN 27 1994

OFFICE OF THE CLERK

NO.

SUPREME COURT

OF THE UNITED STATE

JUNE TERM, 1994

Robert Bonser,

Petitioner

v.

Town of Nottingham, New Hampshire

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF

NEW HAMPSHIRE

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

Terry L. Bonser, Pro Se
24 Smoke St.
Nottingham, NH 03290
(603) 679-2036

Mary L. Parks Bonser, ProSe
(same)

172 pp

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 90-001, Town of Nottingham v. Robert A. Bonser & a., the court upon March 2, 1990 made the following order:

In Town of Nottingham v. Bonser, 131 N.H. 120 (1988), holding against the appealing defendants, we observed that "the [plaintiff] town and the judiciary were [not] subject to the defendants' option to continue the stalemate," id. at 137, which at the time of our opinion had been the sole product of seven years of expensive legal and judicial effort. We directed that on remand the superior court "should . . . forthwith issue notice to the parties, and to third parties with interests in the mobile

homes, to appear for hearing to determine when and under what conditions the town will be required to enter the property to remove the mobile homes at the defendants' expense, failing which the original order of June 10, 1982, will be vacated." On April 4, 1989, we ordered a stay in all State proceedings while the defendants applied for review by the Supreme Court of the United States, but upon denial of certiorari by that Court, we lifted the stay, on June 19, 1989.

No hearing was held in accordance with the quoted instructions, however, until September 14, 1989. Although the town was then ready to undertake the removal of the mobile homes as our opinion permitted, the superior court declined to authorize the town's entry for that purpose. Instead, on September 22, 1989, the court ordered "that all proceedings in this case be

suspended upon the specific condition that within 30 days the [mobile home] tenants, with the approval of the [defendant] property owners, submit all of the required documentation to the Town of Nottingham Planning Board to enable the Planning Board to consider their requests to remain in their homes." The trial court so ordered in spite of its own finding "that there is merit to the Town's position that the interested parties in the litigation were given an opportunity three years ago to resolve the issue of the homes' locations amicably and since that opportunity was wasted it would be wrong to allow them a second opportunity where in fact nothing of substance has changed regarding the position of the town's authority by the owners of the property."

This latter finding referred to the superior court's attempt in 1985 to prod the defendants into applying for

the administrative approvals required under the town's land use regulations, in the hope of ending the violations of the town's ordinances. See id. at 124-30. As the superior court noted in the preceding quotation, that attempt was vain. Equally vain has been the superior court's latest move to foster compliance, by permitting the tenants to step into the defendants' shoes, to do what the defendants have hitherto failed and refused to do themselves. The order of September 22, 1989, in violation of this court's directive, has produced nothing but a continuation of the stalemate. If there were any question about the value of this latest delay of eight months, it could be resolved by reading the tenth question contained in the tenants' notice of appeal, under which they seek to argue to us that the town's ordinances as applied in this case violate State

and National guarantees of equal protection. Like the individual defendant in this case, the tenants "simply will not face the fact that the period for appealing the order of June 10, 1982, is over."

The period for contumaciously maintaining the violation and needlessly prolonging this litigation is also over. We perceive no legitimate question in the defendants' and intervenors' notice of appeal, which is declined under Rule 7. We recognize the patent merit of the issue raised in the town's notice of cross-appeal and motion for summary reversal of the superior court's order of September 22, 1989: the former is accepted and the latter is granted, except for its prayer for costs and attorney's fees for this appeal. We refuse such an award because the superior court's failure to follow the directive of our opinion was, according to the town's

notice of appeal, "on [the court's] own initiative." We therefore think it would be inequitable to tax the ensuing expenses to the defendants and intervenors, however readily they may have taken advantage of the opportunity thus afforded them to prolong the litigation. As to the two other motions ancillary to the notices of appeal, the town's motion for summary disposition is denied, as is the defendants' motion for enlargement of time.

To preclude any further failure to adhere to the directives contained in our earlier opinion, it is also ordered:

1. That the Chief Justice of the Superior Court assume direct supervision of the court's action to comply with these orders;

2. That notice be issued by the superior court

forthwith informing all interested persons that this court's directives will be implemented promptly; that an appropriate hearing be held; and that an order be issued no later than 40 days from the date hereof, on such reasonable conditions as the court may approve, authorizing agents of the Town and supporting personnel "to enter the property to remove the mobile homes [within a reasonable time] at the defendants' expense." Town of Nottingham v. Bonser, supra at 138, unless the defendants shall previously have effected the removals and terminated the violations.

3. That no stay of the superior court's said order be entered except by, or with the prior approval of, this court.

4. That following removal of the mobile homes the superior court promptly issue notice of such proceedings as may be necessary to calculate and determine appropriate penalties for the defendants' contempt, and, after hearing the parties and setting such penalties, issue orders for enforcement of the same.

The filing of a motion to reconsider this order will not stay its effect unless this court affirmatively so orders.

ATTEST: Ralph H. Wood, Clerk

Distribution:

Rockingham County Superior Court

Honorable Richard O. Dunfey

Honorable Kenneth McHugh

Mark S. Gearreald, Esquire

Thomas C. Dunnington, Jr., Esquire

Christopher McGuirk, Esquire

Mr. John A. Settle, Jr.

Mr. Clarance Allard

Mrs. Clarance Allard

Ms. Virginia L. Grey

Ms. Bonnie DeFelice

Mr. David Hetner

Ms. Nancy Hetner

Mr. Ronald Maloof

Ms. Robin Maloof

Mr. Terry Bonser

Ms. Mary T. Bonser

Mr. Robert Bonser

Ms. Mary L. Bonser

Mr. John Bundza

Ms. Kimberly Woods

Mr. Daniel Hersey

Mr. Madith Hersey

Ms. Marjorie Lang

Mr. Gilbert Lang

Mr. Ralph Smith

Ms. Caroline Smith

Donna R. Craig, Supreme Court

File

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS. **SUPERIOR COURT**

THE TOWN OF NOTTINGHAM

V.

ROBERT A. BONSER and

CEDAR WATERS VILLAGE, INC.

E-438-81

On June 10th, 1982, this Court found the Defendants in violation of the ordinances of the Town of Nottingham and enjoined them from the use and occupancy of mobile homes located on their land until they obtained the necessary town building permits and subdivision approvals and complied with existing ordinances. From that date to this, no such approvals and permits have been obtained nor have the mobile homes been removed from the property.

On May 23rd, 1985, this Court attempted to give the Defendants one last chance to be absolved of all contempt charges and financial loss by applying for the permits or removing the mobile homes. The Defendants certified in good faith they would make official application, without equivocation, to the appropriate agencies of the Town of Nottingham for all permits and all approvals and would comply with all ordinances to allow the existence of mobile homes on the land. That agreement required diligent and complete pursuit of the official application process and conformity to all existing laws and ordinances governing the location of mobile homes.

I find from the evidence produced at the last hearing, that the Defendants have not pursued diligently and completely the official application process, nor have

they conformed to all existing laws and ordinances governing the location of mobile homes on the land in question. I find specifically:

1. The Defendants failed to appear at Planning Board Meetings and present and discuss their proposals.
2. The Defendants failed to provide current engineering plans showing the specific locations of mobile homes, septic systems and other land characteristics.
3. They failed to complete the application process.
4. They have engaged in conduct designed to confuse and delay consideration and action by the Planning Board.

From the pleadings and hearings in this case, it is clear that the Defendants' course of conduct stems

from a flawed, personal interpretation of the United States Constitution and the New Hampshire Constitution. Permeating these proceedings is the personal philosophy of the Defendants that zoning laws are unconstitutional, and that property-owners may utilize their land in any way they see fit without governmental intrusion.

The law must be followed by everyone. Zoning laws, subdivision regulations and building codes are constitutional. The ordinances of the Town of Nottingham governing use of the Defendants' property are constitutional. The failure of the Defendants in this case to comply with those laws is an affront to all law-abiding citizens. Their actions strain the patience of reasonable people.

The mobile homes in question have existed on

the land without permits and approvals for over four (4) years. If that condition is allowed to continue, the integrity of land-use enforcement in the Town of Nottingham is severely compromised. Mobile homes placed on the land without permits must be removed.

I find the Defendants' conduct to be in contempt of prior Court orders and, specifically, in contempt of the Court order sated May 23rd, 1985 and accordingly enter the following order:

1. Within seven (7) days of the date of this order, the Defendants shall remove from their property the mobile homes in question.
2. I find that previous civil penalties imposed in the past have been ineffective to achieve compliance with the law and Court orders; and for that reason, after seven (7) days from the date of this

order, a civil penalty of $1,000.00 per day is assessed against the Defendants, jointly, for each day any such mobile home remains on the property.

3. If after seven (7) days from the date of this order, the Defendants have failed to remove all mobile homes, the Town is authorized to take whatever steps are reasonably necessary to begin and complete removal of the mobile homes, including any reasonable force required. All costs of the removal shall be assessed against the Defendants.

4. The Rockingham County Sheriff's Department is hereby authorized to provide whatever assistance is necessary to permit the Town to begin and complete the removal process, including

reasonable force required to maintain security. All costs of this assistance shall be assessed against the Defendants.

5. After removal of all mobile homes in question, the Town shall certify to the Court, in affidavit form, the civil penalties which accrued under Paragraph No. 1 of this order and the costs which were incurred under Paragraphs No. 2 and No. 3. Upon approval of those amounts by the Court, the Clerk of the Rockingham County Superior Court shall forthwith enter civil judgment against the defendants in favor of the Town of Nottingham and, at the request of the Town, shall forthwith issue an execution.

The Court will not entertain any motion for reconsideration, modification or stay of this order unless

both parties join in the request or unless directed by the New Hampshire Supreme Court. The time limit set forth in this order will not be interrupted by the filing of an appeal, pleading, motion or document, or other paper by either party except by order of the New Hampshire Supreme Court.

May 21, 1986 [Joseph P. Nadeau]

DATED PRESIDING JUSTICE

NO. 93-556 & 93-557

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

1993 TERM
DECEMBER SESSION

ROCKINGHAM, SS.

TOWN OF NOTTINGHAM

V.

ROBERT A. BONSER, ET AL

MOTION FOR DECLARATORY JUDGMENT
AND
INVOCATION OF ARTICLE 10, PART FIRST NH CONSTITUTION:
RIGHT OF REVOLUTION

NOW COME the undersigned Appellants, and

WHEREAS the undersigned do not have equal and impartial access, "recourse to the laws", to or within the courts of the State of New Hampshire, especially

the superior courts, for a "remedy" or "redress of grievances" for injuries received in their person, property and character, as enumerated in Notice of Appeals, No. 93-556 & 93-557, Town of Nottingham v. Robert Bonser, et al, resulting in the **perverting of the ends of government and manifestly endangering the public liberty**:

DO SOLEMNLY and **FORMALLY DECLARE** and **MAKE KNOWN** TO ANY AND ALL INTERESTED PARTIES including this Court and all branches of government of the State of New Hampshire that under the laws of the State of New Hampshire **the undersigned are invoking all of the privileges and immunities LAWFULLY included in Article 10, "Right Of Revolution"**, as contained in the **New Hampshire Constitution,** Part First, as follows:

"Article 10. RIGHT OF REVOLUTION.

Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of a right ought to reform the old, or establish a new government,. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind."

AND WHEREAS the undersigned are **CHRISTIAN PACIFISTS** who can only resist in a lawful, nonviolent manner any harm done to them, in this respect, as mandated by Article 10, Part One, New Hampshire Constitution,

DO HEREBY respectfully request that this Court declare what manner of resistance is lawful and ***required*** of Appellants, under Article 10, supra.

FAILURE BY THIS COURT to rule, or to fail to rule fairly and honestly, in this matter will necessitate Appellants petitioning the Executive and Senate and House of Representatives of the State of New Hampshire for a final determination as to the intent of our forefathers and what rights are specifically included and reserved for the people of New Hampshire under Article 10, Right To Revolution, Part One, New Hampshire Constitution and to what extent it applies in this situation.

Respectfully submitted,

December 22, 1993

Robert A. Bonser, Pro Se
24 Smoke St.
Nottingham, NH 03290
(603)679-2036

Terry L. Bonser, Pro Se
(same)

Mary L. Parks Bonser
(same)

STATE OF NEW HAMPSHIRE
COUNTY OF _____

Subscribed and attested before me this 22nd day of December, 1993.

Notary Public/Justice of the Peace

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Motion was mailed by first class mail, postage prepaid, to Mark Gearreald, Esq., at his address of record.

Date:_____ _____

copies to office of:

Governor
Atty. General
House of Representatives
Senate

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In case No. 93-556 Town of Nottingham v. Robert Bonser & a., the Court upon December 13, 1993 made the following order:

The court having reviewed the notice of appeal, the decision below is summarily affirmed in accordance with Rule 25(1)(a) on the basis that no substantial question of law is presented by the appeal, and the court does not disagree with the result below. Town's motion for summary affirmance is, therefore, moot.

Distribution:

Mark Gearreald, Esquire

Mr. Robert Bonser

Thomas Dunnington, Jr., Esquire

Rockingham County Superior Court E-438-81

Hon. Kenneth R. McHugh

Theresa Hayes, Supreme Court

File

Howard J. Zibel,

Clerk

NO. 93-556

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

1993 TERM
DECEMBER SESSION

ROCKINGHAM, SS.

TOWN OF NOTTINGHAM

V.

ROBERT A. BONSER, ET AL

MOTION FOR RECONSIDERATION

NOW COME the undersigned Appellants and respectfully request that this Court reconsider its Order dated December 13, 1993, for all of the reasons stated in Appellants simultaneously filed Motion For Reconsideration in related case No. 93-557, Nottingham v. Bonser, et al., and Appellants Motion For

Declaratory Judgment And Invocation Of Article 10, Part First, NH Constitution: Right Of Revolution, which are incorporated by reference as part of this Motion For Reconsideration, and as follows:

1. In its Order this Court stated "that no substantial question of law is presented". Actually quite the opposite is true. Your Appellants have presented unprecedented questions of violations of State Law , which the Rules of this Court are - including the Code of Judicial Conduct, under Article 73-a, Part Second, of the New Hampshire Constitution, "[t]he rules so promulgated shall have the force and effect of law", by the Superior Court and its Chief Justice Nadeau.

2. These violations of State Law by the superior court and its Chief Justice adversely effect the "Peace and Dignity of the State", Article 88, Part Second, New

Hampshire Constitution, and not only does it lie within the jurisdiction of this Court to hear this matter, but this Court is under Constitutional obligation to hear this matter. See, Art. 4, 72-a, 73-a, Part Second, New Hampshire Constitution.

3. This is not just an ordinary appeal, but rather Appellants have, in essence, filed charges against the lower court and its Chief Justice in this Court, see, NOA, page 7, last paragraph, "If Defendants' NOA is the wrong procedure in this instance, Defendants request that this Court please accept the filing, or advise Defendants what manner would be acceptable". Failure by this Court to properly oversee and hear this very serious matter is a knowledgeable and voluntary abdication of its constitutional powers, under Art. 4, 72, and 73-a, Part Second, New Hampshire Constitution, and will necessitate Appellants appeal to the other two

branches of state government for resolution, see, Articles 17, 38, 39, 73, Part Second, New Hampshire Constitution, which Appellants are prepared to do, as they have suffered and are still suffering extreme injury in their person, property and character, see, paragraphs that follow, below and letter to Governor Merrill, attached:

4. The December 13, 1993 Order at issue herein also states, "and the court does not disagree with the results below". This ruling flies in the face of what this Court just recently mandated , while clarifying the Rules of Judicial Conduct, in Blaisdell v. Rochester, 135 NH, 589 (1992), when the City of Rochester raised this very issue involving the same Judge Nadeau, this Court stated unequivocally, "[w]e are not bound by Liljeberg in construing our own Code of Judicial Conduct. In our opinion, it would be inconsistent with the goals of our

code to require certain standards of behavior from the judiciary in the interest of avoiding the appearance of partiality, but then allow a judge's ruling to stand when those standards have been violated. Therefore, we decline to implement a harmless error test when evaluating violations of the code by the members of the New Hampshire bench." For this Court to fail to apply this same standard to Appellants' case, is discriminatory, and unequal protection and application of the law towards Appellants, all federal civil rights violations and violations of State Law under the New Hampshire Constitution, causing further injury to Appellants and which the judges of the courts of New Hampshire are held accountable for, by State Law, under Art. 4, 17, 38, 39, 72-a, 73, 73-a and Art 88, Part Second, New Hampshire Constitution.

5. Succinctly stated, under State Law, above, as clarified in Blaisdell, supra, there are three major issues if answered in the affirmative would obligate this Court to rule in Appellants' favor and vacate the lower court orders:

a. Has Chief Justice Nadeau recused himself in every manner possible regarding even his remotest involvement with Appellants? *Yes.

*See, Further Order On Motion To Recuse, dated January 6, 1988, attached.

b. Is Chief Justice Nadeau now the head of the superior court, which court's orders are at issue herein? *Yes.

*This is a well known fact.

c. Is Chief Justice Nadeau, now as head of the superior court in charge or related in any manner, whatsoever to this matter, either in theory or in fact, in

violation of the 1988 Further Order On Motion To Recuse, above? *Yes.

*See, Order dated March 2, 1990, in related Supreme Court Case No.90-001, Town of Nottingham v. Bonser, attached, which still stands and see Order of this Court, in related case No. 90-424, Town of Nottingham v. Bonser & a., dated November 18, 1993, which awards a monetary fine to the court of which Chief Justice is the head, making the court a Plaintiff in this matter and converting this matter to criminal. See, Bonser v. Courtney, 124 NH 796 (1984).

Therefore, for this Court to arbitrarily decline this appeal under its Rule 25 (1) (a) and deny Appellants any hearing in this extremely serious matter and for this Court to violate its own mandate in Blaisdell and rule, "the court does not disagree with the results below", without even examining the record or requesting and reviewing the transcript or offering any "salient facts" as

to why Appellants' appeal was "declined", when the Appellants have raised issues that would require this Court to consider both the transcript and the record before making any ruling, is unfair in the extreme and denies Appellants all semblance of fundamental fairness and due process of law, and are all State Law and federal civil rights violations. See, Bundy v. Wilson 815 F.2d 125 (1st Cir. 1987), "[s]ingle-tiered discretionary appellate systems are not subject to less rigorous due process strictures than muti-tiered appellate systems providing at least one appeal as of right...", "nor can the supreme court fairly decide whether to accept - their appeals, without an opportunity to consult a transcript and marshal in writing the salient facts". And, although the federal court was focusing on the due process right to, at least, one appeal in criminal proceedings Appellants assert that this Court is strictly bound by the New Hampshire

Constitution, which makes no distinction between criminal or non-criminal appellant/defendants, "**NO SUBJECT** shall be arrested, imprisoned, despoiled, **OR DEPRIVED OF HIS PROPERTY**, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by judgment of his peers, or the law of the land;" Article 15, Part 1, and for this Court to grant to one subject of the state more rights than any other is discrimination strictly forbidden by the New Hampshire Constitution, especially, but not only, Article 2, Part 1, "**ALL MEN** have certain natural, essential, and inherent rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and **PROTECTING PROPERTY**:", and Article 14, Part 1, "**EVERY SUBJECT** of this state is entitled to **A** certain remedy, by having recourse to the laws...", (emphasis added). The value in controversy at issue herein is $306,214.98, payable to the superior

court and Town of Nottingham, a very significant amount of Appellants' property. It would be preposterous for this Court to grant to a car thief more rights within the New Hampshire judicial system, than a person defending his property from governmental seizure, especially in the very peculiar circumstances of this matter.

6. As long as these substantiated charges, of bias and prejudice on the part of the superior court and Chief Justice Nadeau remain uninvestigated and unlitigated and unresolved Appellants are "put out of the [equal] protection of the law" and have less than equal access to the New Hampshire Judicial system a violation of State Law and a federal civil rights violation.

7. Appellants are currently preparing to file a multi-million dollar civil suit against the Town of

B. Vacate the lower court rulings at issue herein; and/or

C. Place this matter in abeyance until such time as this matter is heard and resolved, in accordance with the New Hampshire Constitution, by the Executive branch and/or House and/or Senate of the State of New Hampshire; and/or

D. Place this matter in abeyance until such time as the meaning and effect of Article 10, Part one, New Hampshire Constitution is established in this matter, as requested by Appellants in simultaneously filed "Motion For Declaratory Judgment and Invocation Of Article 10, Part First, NH Constitution: Right of Revolution, either by this Court or the Executive branch and/or House and/or Senate of the State of New Hampshire .

Nottingham, on the merits of this case, for damages, based on Chester, (the merits in this case never having been heard due to the alleged procedural default of only one of the parties to this matter), in the superior court and Appellants are denied any meaningful access, no recourse to the law, because of these serious, substantiated, unresolved issues of bias and prejudice on the part of the superior court and Chief Justice Nadeau in violation of State Law and are all federal civil rights violation.

FOR ALL OF THE FOREGOING reasons, including all those raised in Appellants NOA filed on August 19, 1993, Appellants respectfully request this Court:

A. Accept this Notice of Appeal and set schedule for briefs and hearing ; and/or

Respectfully submitted,

CEDAR WATERS VILLAGE, INC:

December 22, 1993

_____

By its counsel, per NH Supreme Court
Thomas Dunnington,Jr.,Esq.

DEFENDANT, PRO SE:

_____

Robert A. Bonser, Pro Se

INTERVENOR: CEDAR WATERS VILLAGE PARTNERSHIP, By all of its partners, pro se:

_____

Terry L. Bonser, Pro Se

_____

Mary L. Parks Bonser,ProSe

_____

Robert A. Bonser, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion has been mailed, first class, postage prepaid to Mark Gearreald, Esq., at his address of record.

Date:_____ _____

copies to:

Gov. Merrill

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In case No. 93-556, Town of Nottingham v. Robert Bonser & a., the Court upon January 28, 1994 made the following order:

Defendants' motion for reconsideration is denied. Defendants' motion for declaratory judgment and invocation of part I, article 10 of the New Hampshire Constitution is also denied.

Distribution

Mark Gearreald, Esquire

Mr. Robert Bonser

Thomas Dunnington, Jr., Esquire

Rockingham County Superior Court E-438-81

Hon. Kenneth R. McHugh

Theresa Hayes, Supreme Court

File

Howard J. Zibel,

Clerk

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In case No. 90-424, Town of Nottingham v. Robert Bonser & a., the Court upon November 18, 1992 made the following order:

Upon a review of the briefs and oral argument, the court determines that the defendants did not have a right to a jury trial, as no such right exists in civil contempt proceedings. See Bonser v. Courtney, 124 N.H. 796, 810, 481 A. 2d 524, 532 (1984). Further, the Superior Court did not abuse its broad discretion in determining the conditions under which the town removed the mobile homes. See Town of Nottingham v. Bonser, 131 N.H. 120, 138, 552 A. 2d 58, 68 (1988).

While the Superior Court's order relative to the amount of the fine, under the conditions existing at the

time of its order, was reasonable, we conclude that the case should be remanded to the Superior Court for a decision as to whether or not the fine is now equitable in view of the character and magnitude of the harm threatened by the defendants' failure to remove the mobile homes and the defendants' financial resources and the consequent seriousness of the sanction's burden. See N.Y. State Nat. Organization for Women v. Terry, 886 F.2d 1339, 1352-53 (2d Cir. 1989), cert. denied, 495 U.S. 947 (1990).

Upon remand, the Superior Court should award the plaintiff town all costs and attorney's fees associated with this matter as a compensatory sanction, see United States v. United Mine Workers of America, 330 U.S. 258, 304 (1947), and should impose an appropriate fine, supported by findings, payable to the

Court, as a result of the coercive sanction, see General Signal Corp. v. Donallco, Inc., 787 F. 2d 1376, 1380 (9th. Cir, 1986), keeping in mind the considerations set forth above.

Reversed and remanded.

Distribution:

Clerk, Rockingham County Superior Court

Mark Gearreald, Esquire

Robert A. Bonser, pro se

Partners of Cedar Waters Village PS

Tenants of Cedar Waters

Thomas Dunnington, Jr.

Theresa H. Hayes, Supreme Court

Hon. Kenneth McHugh

File

Howard J. Zibel

Clerk

RULE 25. SUMMARY DISPOSITION

(1) The supreme court may at any time, on its own motion and without notice or on such notice as it may order, dispose of a case, or any question raised therein, summarily. An order of summary affirmance under this rule may be entered when (a) no substantial question of law is presented and the supreme court does not disagree with the result below, or (b) the case includes the opinion of the lower court, which identifies and discusses the issues presented and with which the supreme court does not disagree, or (c) the case includes the decision of the administrative agency appealed from, and no substantial question of law is presented and the supreme court does not find the decision unjust or unreasonable, or (d) other just cause exists for summary affirmance, in which case the order

shall contain a succinct statement of the reason for affirmance. An order of summary dismissal under this rule may be entered when the supreme court has not considered the merits, because the court clearly lacks jurisdiction, or other just cause for summary dismissal exists, in which case the order shall contain a succinct statement of the reason for dismissal. An order of summary reversal may be made by the supreme court under this rule for just cause and the order shall contain a succinct statement of the reason therefor.

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

ROCKINGHAM, SS. FEBRUARY TERM, 1993

NO. E-438-81

Town of Nottingham

v.

Robert A. Bonser et al

MOTION TO RECUSE

AND DISMISS

NOW COME the defendants and Intervenors (Defendants) and respectfully recuse the Superior Court and move to dismiss this matter, as follows:

1. On January 6, 1988 Justice Nadeau filed in this case an order, "FURTHER ORDER ON MOTION TO RECUSE". See, docket card #13, copy attached and

copy, of order, attached and incorporated by reference as part of this motion.

2. In the 1988 order Justice Nadeau emphatically states his deep aversion towards your defendants, and that by the order he was "recusing [him]self from any further participation in these cases", that his feelings are so intense that he cannot remain impartial to even "associates" of your Defendants and that he, Judge Nadeau, "cannot expect to maintain objectivity in the future". This order still stands - Judge Nadeau is recused from any further participation in this matter.

3. On January 23, 1993 Defendants received, in the mail, an incomplete order of Justice McHugh's, dated January 21, 1993, which error was corrected by this court's clerk's office under clerk's notice dated January 25, 1993.

4. On both of the clerk's notices (the incorrect January 22, 1993 notice and the corrected January 25, 1993 notice) Defendants were shocked to see that copies were being sent to Justice Nadeau. See, copies attached.

5. On January 25, 1993, upon reviewing the file, at the Rockingham Country Superior Court Clerk's office, Defendants also found copies of an ex parte communication, dated January 14, 1993, between Clerk Taylor and Judge McHugh, to which Justice Nadeau was privy. See, copy attached.

6. In light of the above and especially where Judge Nadeau is now the head of the superior court, the moment that Judge Nadeau's name became currently associated with this matter Defendants' case was prejudiced, and the judges of the superior court who are

to hear this matter became biased (have a personal interest above the rights of the Defendants), because the judges are aware that Judge Nadeau is the head of the court on which they sit, are aware of Judge Nadeau's stated aversion to Defendants, the 1988 order (attached) is part of this record, and are also aware the Judge Nadeau is now being notified of their (the judges') every move in this matter, regardless as to why Judge Nadeau is being notified. The result being that Defendants' case is prejudiced and completely and wholly contaminated and your Defendants' ability to obtain a fair and impartial trial utterly destroyed, so that this court is without (lacks) jurisdiction in this matter and the case must be dismissed. See, Rules of the Supreme Court of the State of New Hampshire, Rule 38, Code of Judicial Conduct, Canon 1 - 7; New Hampshire

Constitution, including but not only, Part 1, Article 2d, 4th, 5th, 6th, 8th, 10th, 14th, 15th, 18th, 20th, 22d, 33rd, 35th, 38th, Part 2nd, Article 73, 73-a; United States Constitution, including but not only, Bill of Rights, 1, 4, 5, 6, 7, 8, 14, which are incorporated by reference as part of this motion.

7. By the filing of this motion Defendants are not granting jurisdiction to this court, but are merely raising and preserving the issues.

WHEREFORE, Defendants and Intervenors respectfully assert this matter must be dismissed as this court lacks jurisdiction.

Respectfully submitted,

February 3, 1993 [Robert A. Bonser]

Robert A. Bonser, Pro Se

CEDAR WATERS VILLAGE, INC.

[Robert A. Bonser]

Robert A. Bonser, Pro Se

CEDAR WATERS VILLAGE PARTNERSHIP, PRO SE

BY ALL OF ITS PARTNERS, PRO SE

[Terry Bonser]

Terry L. Bonser, Pro Se

[Mary L. Bonser]

Mary L. Bonser, Pro Se

[Robert A. Bonser]

Robert A. Bonser, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that I have mailed this date a true copy of the foregoing, first class, postage prepaid, to Mark Gearreald, Esq., at his address of record.

[February 4, 1993] [Mary L. Bonser]

PUBLISHER'S NOTE:

Page(s) A-56 missing in original.

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS SUPERIOR COURT

Town of Nottingham

v.

Cedar Waters Village, Inc.

and

Town of Nottingham

v.

Robert Bonser

FURTHER ORDER ON MOTION TO RECUSE

For the reasons set forth in this decision, I am recusing myself from any further participation in these cases.

The defendants apparently seek summary reversal in the Supreme Court of a final Superior Court order on the merits after five years of litigation because

of some undisclosed role of attorney Joseph Michael. It is clear from the record and my written orders that no pleading and affidavit was ever filed in Superior Court asking for such relief; that until the motion to recuse was filed on May 22, 1987, his name was never mentioned; that he never filed or signed a pleading; that no one ever asserted he advised or assisted them prior to the final decision; that I was never aware, nor am I now aware, of any role he played in these matters.

In any event, the motion to recuse was granted in part and denied in part in writing based on the motion filed at the time. If the Supreme Court is going to entertain a new motion at this stage, I believe it should be decided on the record in the Superior Court. For some reason the parties have not requested that record nor has the Supreme Court ordered it. Consideration of

such a motion by the Supreme Court, now, as an exercise of original jurisdiction except on that record seems to me unwarranted and unwise.

I believe the record will disclose that I acted objectively in these cases. That I did my utmost to treat the parties fairly. Before these cases were specifically assigned to me, they were heard by at least seven Superior Court Justices and one Supreme Court Justice. The defendants were consistently found guilty of contempt and Mr. Bonser was eventually jailed by order of Supreme Court Justice Charles Douglas. I labored long and hard to give Mr. Bonser an honorable way to purge himself of that contempt. He was released by me after promising good faith compliance with my order, and I believe he might have done so but for the poor advice or bad faith counsel of others.

Clearly, there is more at stake in this case than a few zoning violations. At stake is the power of the trial court to act efficiently and effectively in the absence of good faith compliance with its orders.

Those who advise Mr. Bonser are advising others as well. I have presided over many of their cases. Before today I accepted as standard practice endless efforts to thwart judicial administration; constant confrontational tactics; and regular motions to recuse. I endured, as did other judges, suits against us in Federal Court, then motions to recuse based on those suits. I saw no justification and dangerous precedent for Justices to succumb to these maneuvers.

I was determined that law and order should prevail. I was determined to use every skill I possessed to administer the law fairly and evenhandedly. I believe

no other Justice would have maintained any greater neutrality and objectivity. In light of that effort and the five year record, the order of December 23, 1987, is impossible to understand. I have no way of knowing the basis or explanation so I can address only what it reasonably appears to represent.

The order represents the establishment of an entirely new quasi-judicial procedure for handling motions to recuse. It represents a drastic departure from traditional values, judicial precedent and established order. It represents a clear and present danger to the personal and judicial independence of all judges. Its very existence impugns judicial integrity without the slightest justification.

The order has taken a Superior Court Justice from the bench to the counsel table. It has resulted in

his subpoena by both parties. It subjects Justices to a process which has the potential to be misunderstood by the public. It establishes a fact finding process that fails to accord the trial judge the fundamental fairness required by law. The order raises serious questions and presents dangerous implications for the future handling of motions to recuse on all judicial levels.

Is there any reason this same process may not be demanded in Superior Court? And by a party who objects to recusal as well? Is the judge to testify in the Supreme Court hearing? The Superior Court hearing? Does anyone really expect a judge under threat of subpoena and a quasi-judicial hearing to trust that these individuals, who ignore laws and decisions they don't like, will not misstate or even manufacture evidence? Shall he, then, have counsel? File pleadings? Question

witnesses? Take depositions? Subpoena records? Introduce evidence?

Unless that order is withdrawn, it will eventually plague all trial judges. It will be read in the future, as it has been read by the parties in this case to force a judge to testify at a Supreme Court hearing. Unless he recuses himself every time he is requested, he will face that demeaning process. Some judges already refuse to sit on these cases and others recuse themselves to avoid them. Without question that order will be used in the future to intimidate judges. That order forces even the most conscientious judge to recuse himself always or face continued harassment.

Is it fair to a trial judge to force him to decide whether to ignore the hearing and face findings of fact without being heard or to submit to a process which is

fundamentally unfair to him? Never in New Hampshire history has such a result been permitted or required. Does not the judge, in fact, have judicial immunity from testifying? I believe he does. Should not he assert that right and disregard the subpoenas so as not to waive the right for himself and others? I believe he should.

Hopefully, the Supreme Court will not allow to stand an order that presents such a potential for misunderstanding and abuse. Hopefully, it will not allow to stand an order that appears so insensitive to the position of the trial judge. Practice, tradition and the common law leave to the judge the decision to recuse. That is where it belongs. If there is insufficient evidence in the Superior Court record to sustain a party's objection to judicial orders, the Supreme Court should not enlarge that record. To do so is to deviate from

practice and tradition, to substitute advocacy for review, expediency for precedent, and chaos for order.

Since being subpoenaed, I have spent many hours thinking about this case and the conduct of those who lie behind it. Because of this intense reflection and the strong feelings it has produced, I cannot expect to maintain objectivity in the future. Accordingly, by this order I am notifying the clerks of Superior Court that I will no longer sit on any matter involving Mr. Bonser or his associates. And I am notifying the parties that I assert judicial immunity and will not appear in response to their subpoenas. If these decisions mean the assault mounted on the court by those who would undermine its foundations has been partially successful, I regret that. There are, however, no reasonable alternatives.

So ordered.

January 6, 1988 [Joseph P. Nadeau]

DATED PRESIDING JUSTICE

11:42 AM

A-67

Office of

Clerk of Superior Court

Rockingham County

One Hampton Road

Exeter, New Hampshire 03833-4823

Raymond W. Taylor, Clerk — Domestic Relations

Laurie G. Yadoff, Deputy Clerk — (603)778-8580

Cynthia A. Perrault, Deputy Clerk — Civil, Equity Criminal

Brian D. Kenyon, Deputy Clerk — (603)772-3714

Rosalie C. Wilson, Deputy Clerk

January 22, 1993

Mark S. Gearreald, Esquire

Engel & Gearreald, Attornes

P.O. Box 278

Exeter, New Hampshire 03833

Mary L. Perkins Bonser

RFD 1, CWV

Durham, NH 03824

Terry L. Bonser

RFD 1, CWV

Durham, NH 03824

Robert A. Bonser

RFD, Cedar Waters Village

Durham, NH 03824

Mary T. Bonser

CWV, RFD

Durham, NH 03824

Thomas Dunnington, Esquire

662 Central Avenue

Dover, NH 03820

Cedar Waters Village, Inc.

RFD, CWV

Durham, NH 03824

Cedar Waters Partnership

RFD, CWV

Durham, NH 03824

In re: E-438-81 Town of Nottingham vs. Robert A. Bonser et al.

Dear Ladies & Gentlemen:

Enclosed please find a copy of the Court's (McHugh, J) Order of January 21, 1993 in the above entitled matter.

Very truly yours,

Raymond W. Taylor, Clerk

cc. Hon. Joseph P. Nadeau

Office of

Clerk of Superior Court

Rockingham County

One Hampton Road

Exeter, New Hampshire 03833-4823

Raymond W. Taylor, Clerk — Domestic Relations

Laurie G. Yadoff, Deputy Clerk — (603)778-8580

Cynthia A. Perrault, Deputy Clerk — Civil, Equity Criminal

Brian D. Kenyon, Deputy Clerk — (603)772-3714

Rosalie C. Wilson, Deputy Clerk

January 25, 1993

Mark S. Gearreald, Esquire

Engel & Gearreald, Attornes

P.O. Box 278

Exeter, New Hampshire 03833

Mary L. Perkins Bonser

RFD 1, CWV

Durham, NH 03824

Terry L. Bonser

RFD 1, CWV

Durham, NH 03824

Robert A. Bonser

RFD, Cedar Waters Village

Durham, NH 03824

Mary T. Bonser

CWV, RFD

Durham, NH 03824

Thomas Dunnington, Esquire

662 Central Avenue

Dover, NH 03820

Cedar Waters Village, Inc.

RFD, CWV

Durham, NH 03824

Cedar Waters Partnership

RFD, CWV

Durham, NH 03824

In re: E-438-81 Town of Nottingham vs. Robert A. Bonser et al.

Ladies & Gentlemen:

Enclosed please find a copy of the Court's (McHugh, J) Order of January 21, 1993 in the above entitled matter.

Very truly yours,

Raymond W. Taylor, Clerk

rcw

cc. Hon. Joseph P. Nadeau

Office of

Clerk of Superior Court

Rockingham County

One Hampton Road

Exeter, New Hampshire 03833-4823

Raymond W. Taylor, Clerk — Domestic Relations

Laurie G. Yadoff, Deputy Clerk — (603)778-8580

Cynthia A. Perrault, Deputy Clerk — Civil, Equity Criminal

Brian D. Kenyon, Deputy Clerk — (603)772-3714

Rosalie C. Wilson, Deputy Clerk

January 14, 1993

Hon. Kenneth R. McHugh

14 Jefferson Drive

Hooksett, NH 03106

In re: E-438-81 Town of Nottingham vs. Robert Bonser

Supreme Court No. 90-424

Dear Judge McHugh:

Enclosed please find a copy of the Supreme Court Certificate in the above entitled matter that was assigned to you under the complex assignment policy.

It would appear that we need to schedule a further hearing on the appropriate fine to be imposed together with the Town's Petition to Attach with Notice and Motion to Impound Evidence of destroyed Mobile Home. Accordingly, at your convenience please let me know and we'll make the necessary arrangements.

If you need any further paper work or copies of pleadings, please advise.

Sincerely,

Raymond J. Taylor, Clerk

rwt/rcw

cc: Hon. Joseph P. Nadeau

1/21/93
"Ray- Order enclosed - mail to All interested parties
Ken McHugh"

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY SUPERIOR COURT

TOWN OF NOTTINGHAM

v.

ROBERT A. BONSER, ET AL.

81-E-438

ORDER ON DEFENDANTS' MOTION TO RECUSE AND DISMISS

The defendants have filed the within motion in response to this Court's order dated January 21, 1993. In that order the Court made reference to the Supreme Court's recent remand of this case to Superior Court for further hearings consistent with their order dated November 18, 1992.

Apparently, after receiving this Court's order, the defendants had occasion to review the Superior Court

file concerning this case. In that review they were made aware of the fact that the Clerk forwarded copies of three letters involving the scheduling of this case for further hearing to Chief Justice Joseph Nadeau. The dates of those correspondence are January 14, 1993; January 22, 1993; and January 25, 1993. They allege that since Judge Nadeau recused himself from participating in any facet of this case back in 1988, it was error for either this Court or the Clerk to have any further contact with Judge Nadeau about this particular case. The defendants suggest that the remedy for this error is the dismissal of this case and they assert that this Court, apparently because of the communication to Judge Nadeau, now lacks jurisdiction. The argument made by the defendants is wholly without merit.

This case was specially assigned to this Court to preside over several years ago. The special assignment was ordered by then Chief Justice Richard Dunfey. In any case that is specially assigned, the policy of the Clerks throughout the State is to forward copies of all communication to the Chief Justice for his file and the Clerks are specifically requested to notify the Chief Justice when a specially-assigned case has been completed as the Chief Justice keeps a record of all special assignments. Thus, when the Clerk forwarded copies of the three letters in question to Judge Nadeau, they were forwarding those copies to him not in his capacity as a judge that has had some involvement with this case, but rather in his capacity as Chief Justice, since former Chief Justice Dunfey is now deceased and Judge Nadeau has been appointed Chief Justice of the

Superior Court.

In order to dispel any fears that the defendants may have, this Court wishes to make it clear that it has had no discussions about this case with Judge Nadeau nor would it intend to even if Judge Nadeau had no prior involvement in this case. This Court has received perhaps 20 special assignments from the Chief Justice over the past seven years and in no case has it ever had occasion to discuss a special assignment with the Chief Justice with the notable exception of this particular case inasmuch as that request was made by the Supreme Court as a result of earlier pleadings filed. Moreover, although Judge Nadeau is technically this Court 's superior in the sense that he is the administrative head of the Superior Court, Judge Nadeau has no greater authority than this Court, nor

would this Court ever consider discussing the merits of any case with Judge Nadeau in order to get his input. Judge Nadeau has been recused from participation in this litigation and that recusal order remains and Judge Nadeau will have no substantive involvement with this case in the future. Moreover, again, in order to alleviate any fears the defendants might have in this regard, the Court orders the Clerk, in this particular case only, not to forward any communication to Judge Nadeau or to the Superior Court Center.

The defendants' motion to recuse and dismiss is denied.

So ordered.

Dated: March 9, 1993

Kenneth R. McHugh,

Presiding Justice

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS. **SUPERIOR COURT**

THE TOWN OF NOTTINGHAM

V.

ROBERT A. BONSER et al

DOCKET NO. E-438-81

ORDER ON ISSUES REMANDED

BY SUPREME COURT

After extensive involvement in this litigation, this Court issued a 19-page final order dated July 20, 1990. The order referenced all of the pending issues in the case. An appeal was taken from that order to the New Hampshire Supreme Court. On November 18, 1992, the Supreme Court issued a one-page ruling which reflected the fact that it had reviewed the briefs of the parties and had conducted oral argument, but elected not to issue

a written opinion. The Supreme Court's directive of November 18, 1992 reaffirmed this Court's holding that the defendants did not have the right to a jury trial. The Supreme Court also affirmed the Court's decision regarding the removal of the mobile homes which were found to be in violation of the zoning ordinance. The Supreme Court, however, because conditions had perhaps changed since the time the homes were removed from the property, ordered the case be remanded to the Superior Court to determine whether or not the penalty which the Court affixed at something in excess of one million dollars should still be implemented. The Supreme Court in essence requested that this Court review all of the surrounding circumstances in this litigation to determine whether or not its initial penalty order should be reconsidered. The

Supreme Court also indicated that the Court should award the plaintiff all costs and attorney fees associated with this litigation as a matter of compensatory sanctions. It also indicated that the Court should impose an appropriate monetary penalty payable to the Court as a coercive sanction.

Upon receipt of the Supreme Court's order, this Court scheduled a hearing on May 7, 1993. The purpose of the hearing, as stated by this Court's preliminary orders, was to determine whether or not the amount of attorney fees and related expenses submitted by counsel for the plaintiff was reasonable; and, secondly, to determine what an appropriate penalty should be, which would be couched in terms of a fine payable to the Court. A hearing was in fact held on May 7, 1993, wherein these issues were discussed at

length. All defendants appeared and participated in the hearing. After the hearing, the Court gave both parties appropriate periods of time to submit additional pleadings and also gave the defendants an opportunity to submit to the Court financial affidavits reflecting their current financial situation, the information contained in these affidavits being for the Court's review only, not being disclosed to the plaintiff. Supplemental pleadings have, in fact, been filed which the Court has reviewed and, thus, the Court makes the within order on the pending issues.

The court will first discuss the issue of the attorney fees and removal costs claimed by the plaintiff. While the Supreme Court ordered this Court to award the plaintiff all costs and attorney fees associated with this case, this Court imposed the condition of

reasonableness on any fees and removal costs claimed by the plaintiff. It was this Court's belief that although the word "reasonable" was not contained in the Supreme Court's order, any fees or costs ordered would have to pass the reasonableness standard in order to be justified. The Court, therefore, ordered the plaintiff to submit a detailed accounting of all fees and costs claimed as a result of this litigation. This information was supplied to the defendants approximately one month prior to the May 7, 1993 hearing. The Court gave the defendants an opportunity to argue at the hearing that the work billed for was not appropriate and the defendants availed themselves of that opportunity. They also requested an opportunity to submit a further pleading attacking various charges made by the plaintiff and the Court has reviewed that pleading.

In reviewing the detailed accounting supplied by plaintiff's counsel, the Court is impressed by the thoroughness of the documents submitted. They break down the work billed for into various chronological periods and specifically indicate the nature of the work done as well as the time allotted for the work and the cost. The defendants do not take the position that the charges have not been sufficiently explained, however, they do raise several issues which they feel should compel the Court to rule that at least portions of the amount billed for should not be deemed compensable for various reasons.

The evidence submitted at the hearing revealed that the total of the plaintiff's claimed legal fees and related expenses up to and including the date of the hearing was $128,815.91. From that total, the plaintiff

concedes that the defendants are entitled to a credit of $6,750.00 for moneys previously paid. Thus, the claimed amount as of May 7, 1993, becomes $122,065.91. In addition, the plaintiff argues that it is entitled to reimbursement for all work done on the day of the hearing and later-filed related pleadings. While the Court agrees with that assertion, it notes that the plaintiff has failed to submit an affidavit for such work; and in an effort to bring this case to a close as soon as possible, the Court deems any claim for fees earned after May 7, 1993, waived.

A component of the moneys claimed by the Town consists not of attorney fees per se but, rather, expenses actually incurred by it in the removal and security of the illegal mobile homes. The total of these expenses is $41,004.44, and the defendants have been

provided with detailed invoices from the various service providers for this work done which include mobile home moving companies and security personnel necessary to carry out the removal action. While the defendants have a quarrel with a portion of these expenses, the Court finds that they are all reasonable. Inasmuch as the Town seeks nothing more than a dollar for dollar reimbursement for moneys expended in carrying out this Court's lawful order, the Court determines said sum is due and owing by the defendants to the Town.

At present, the Town claims it is owed a total of $122,065.91 for its costs and legal fees. The defendants have articulated nine specific objections to portions of the fees claimed. Those objections are set forth below:

1. No fees can be claimed for the period of time

when Robert Bonser was not in contempt of court, therefore, fees and expenses claimed prior to November 23, 1982 and after May 22, 1990 must be subtracted.

2. Part of the fees claimed by the Town was for litigation involved in the Federal Court. Inasmuch as this Court has no jurisdiction to assess fees for such work, and inasmuch as the Supreme Court did not have the total of these fees before it when it remanded the case back to this Court in its November 18, 1992 order, those fees must also be subtracted.

3. In a prior hearing several years ago before Judge Nadeau, the Town claimed fees of $23,067.38. He reduced that amount to $13,873.40, and, thus, the Town is not entitled now to resubmit

those previously excluded fees as part of its overall claim for fee reimbursement.

4. One portion of the plaintiff's fees is claimed to be $5,955.41. Adding the figures up reflects the fact that a transposition error was made by the Town, as the total for that particular work should have been $4,955.41.

5. In a prior appeal, the Supreme Court found the Town in error in granting the defendants and tenants the right to apply for building permits. The costs for this error are stated to be $1,076.66 by the Town, for which the defendants are not liable.

6. Any fees claimed after the last Supreme Court appeal should not be included, because when that Court issued its November 18, 1992 order

commanding the defendants to reimburse the Town for all legal fees it was aware of the general amount claimed by the Town at that time, however, the Supreme Court was not aware that the Town would be submitting additional fee charges in excess of $40,000.00. Had the Supreme Court realized the additional financial impact of such an increase, it might not have issued its all encompassing reimbursement order.

7. In addition to submitting fees for reimbursement in case number E-438-81, the plaintiff has also submitted fees for reimbursement in a different case currently pending in the Rockingham County Superior Court, a case wherein the plaintiffs allege fraudulent conveyance of property. The defendants argue that a strict

reading of the Supreme Court's remand to this Court was to limit the Town's right to seek reimbursement for attorney's fees to just this case, not to any other case between the parties, and, thus, any fees claimed for work done by the Town on the fraudulent conveyance should be subtracted.

8. The defendants also argue that some of the work billed for was unnecessary in the sense that allegations made by the plaintiff were not found to be meritorious either in this Court or on appeal to the Supreme Court. The defendants argue that they should not be billed for any work done by the Town on any issues which were either not found meritorious on the Superior Court level or were not found meritorious by the Supreme Court

on appeal.

9. The defendants argue that many of the fees claimed by the Town are either vague or excessive, and they question the entire billing procedure.

The Court will address each of the defendants' objections to the total fees claimed by the Town.

The defendants first claim that justice requires that fee reimbursement be limited to those times when defendant, Robert Bonser, was actually in contempt of court. In this Court's view, the Supreme Court was well aware of the fact that Robert Bonser was not in contempt for the entire period of this litigation when it issued its November 18, 1992 order, although, admittedly, it probably was not aware of the specific time periods involved.

The effect of the Supreme Court's November 18, 1992 order is to make the defendants fully liable for all out-of-pocket expenses and legal fees incurred by the Town as a result of its dealings with the defendants regarding the issue of the illegal mobile homes. However, it presumably recognized that the potential for the cost to the defendants for those items was high, and, thus, it remanded the case to this Court asking that it look at the other components of financial exposure that the defendants have; namely, the penalty component which the Supreme Court knew was approximately 1.5 million dollars. The Supreme Court was asking this Court to reconsider the penalty amount in the light of the fact that the defendants were being ordered to fully reimburse the Town for all of its fees and expenses.

The Supreme Court's remanded order must be read in its entirety, which, if done, makes its purpose clear. On the one hand, the Supreme Court is ordering the defendants to be fully responsible for the Town's monetary expenditures regarding all aspects of this case. Yet, on the other hand, the Supreme Court suggests that in view of the high cost of such expenditures, then perhaps the defendants' penalty should be reduced. As the Town suggests in its response to the defendants' reply on the attorneys fee issue, the Supreme Court has changed the rules of the game by expanding the Town's entitlement to all costs and attorneys fees, not just those previously referenced or approved. That being this Court's interpretation of the Supreme Court's directive, it finds that the defendants are responsible for all of the Town's

expenditures for legal fees, even for those periods of time when defendant, Robert Bonser, was not technically in contempt of any court order. The "consideration" for this more expansive order regarding the reimbursement of cost and fees is the reduction of the penalty portion of this Court's July 20, 1990 order, which this Court will address later on herein.

The defendants also claim that they cannot be held responsible for any legal expenses incurred by the Town in any litigation involving them in the Federal Court. Contrary to the defendants' assertions, this Court does have the authority to order reimbursement for expenditure of funds from other courts so long as the expenditures are legitimately involved in this dispute between the parties concerning the illegally placed mobile homes. The Court finds that the expenditures

listed by the Town for work done in Federal Court were specifically involving the mobile homes at issue, and, therefore, the Town legitimately can claim reimbursement from the defendants for work done in Federal Court in the context of this litigation. Moreover, the Court also finds that the Supreme Court's directive for full reimbursement to the Town would include work done in other forums, such as the Federal Court, so long as the work billed was involving the illegally placed mobile homes.

The defendants argue that inasmuch as Judge Nadeau struck a portion of the Town's legal expenses many years ago as part of one of his orders, then his decision to eliminate certain expenditures is binding on this Court. The Town, they argue, cannot now resubmit those previously eliminated expenditures as part of their

overall claim against the defendants for reimbursement of attorney fees. Although the defendants abhor the past participation of Judge Nadeau in this litigation, apparently they did like a portion of one of his orders. Nevertheless, the Court finds that in light of the Supreme Court's apparent decision to give the defendants a break in terms of the reduction of a penalty for contempt of court, it was the Supreme Court's intention to make the Town whole with respect to legal fees expended, and, thus, the Court finds that the Town has the right to now add in attorney fees that had been previously excluded by Judge Nadeau. Note that when Judge Nadeau excluded some fees years ago he did not do so on the basis that the fees charged were excessive, Rather, he simply felt that in light of the amount of those fees he would order a reduction in

the hopes of getting the defendants to pay the reduced amount without further objection. Obviously, any hope that Judge Nadeau may have had in that regard was never realized.

The defendants make reference to what appears to be a transposition error in one portion of the plaintiff's claim for attorney fees. In reviewing that portion of the Town's bill, both the plaintiff and the Court agree with the defendants that an error was made, and, thus, the total of the legal fees claims by the plaintiff should be reduced by $1,000.00.

The defendants also argue that they were billed for work surrounding the application for building permits. They allege that the error reflected in a charge of $1,076.66. As the plaintiff has correctly explained in its response to defendants' reply to attorney fees, the

amount at issue herein is valid but not previously billed, consequently it should be the responsibility of the defendants.

The defendants also object to being responsible for fee amounts in excess of $40,000.00 that were generated after the Supreme Court last had an opportunity to review this case. They argue that if the Supreme Court knew that the attorney fees claimed by the plaintiff would be some $40,000.00 higher than what they were aware of when they issued their November 18, 1992 order, then in fact some limit may have been placed on the reimbursement of attorney fees. The Court disagrees. As the Court has set forth herein, it believes that the Supreme Court intended that the Town be fully reimbursed for all legitimate expenses no matter what the amount was so long as this Court reviewed

with an eye toward reducing the penalty sanction, which the Supreme Court had been notified approximated 1.5 million dollars.

The defendant points out that the plaintiff has submitted bills for work done in the collateral case of fraudulent conveyance, which is a different case than the one for which the Supreme Court order was applicable. Again, however, in this Court's view, the fraudulent conveyance case was a natural outgrowth of this litigation. In fact, the plaintiff was required to bring the fraudulent conveyance equity action as a result of the defendants' actions in this litigation. There were allegations made of a transfer in the legal title to the property, and the sole purpose for the plaintiff bringing the fraudulent conveyance action was to enable it to obtain a real estate attachment on the defendants'

property so that that property would be available to satisfy any monetary reimbursement that the Town was hoping to recoup at the time the fraudulent conveyance action was filed. While it is true that no formal finding of fraudulent conveyance was made in that other case, it is also true that the merits of that other case were never litigated because the purpose for which it was brought, namely, the obtaining of a real estate attachment, was realized, and, thus, there was no further need for the plaintiff to go forward in that other case. In this Court's view, the sole reason for filing the fraudulent conveyance case was the actions of the defendants in terms of changing the legal titleholder to the property at issue. It is, therefore, logical to order that the defendants reimburse the Town for all expenses related to the bringing of the fraudulent conveyance

case.

The defendants also feel that any work that was billed for to support any allegations made by the Town that were not found to be meritorious by either this Court or the Supreme Court on appeal should not have to be their responsibility. The Court would agree with the defendants that if upon review of the plaintiff's legal fee statements there was evidence that the Town insisted upon arguing issues that were clearly nonmeritorious for the sole purpose of increasing the size of their legal fees, then those charges should not be reimbursable by the defendants. However, the Court does not see any evidence of those kinds of charges in the legal fee statements. The mere fact that all of the plaintiff's legal arguments may not have been found to be meritorious does not negate the Town's right to

obtain reimbursement of legal fees. Inasmuch as the Court has specifically found that none of the plaintiff's legal arguments can be found to be frivolous, the Court finds that all of the legal fees claimed by the plaintiff, less those herein specifically subtracted, are reasonable and should be the responsibility of the defendants.

The defendants' final objection to the payment of attorney fees is that they claim some of the charges are either vague or excessive. The Court, however, is not impressed with the defendants' seemingly haphazard attempt to pick and choose individual charges and allegations that they claim did not appear to be related to this litigation. While it would be impossible for this Court to make a factual finding about the validity of each and every charge billed for, given the fact that this case encompasses over 450 pleadings and involves

litigation extending for 12 years, the Court has reviewed all of the charges and finds that they all appear to be reasonable and directly related to this litigation. Moreover, the Town in its reply has addressed the specific charges questioned by the defendants and explained why they were all valid; and the Court finds its explanation to be credible.

In summary, on the issue of reimbursement for costs and attorney fees, the Court finds and rules that the Town of Nottingham is entitled to be paid the total sum of $121,065.91 by the defendants.

The Court will now revisit the penalty issue. The file reveals that the first time a civil monetary penalty was assessed against the defendants for their failure to remove the offending homes from their property was back in 1982 when the Court ordered a daily penalty of

$50.00 be paid until the homes were removed. No attempt was made to remove the homes under the order, and there was an accumulated penalty of $38,550.00 as of May 23, 1985. On that date, the Court suspended the implementation of the $50.00 penalty and the issue was not addressed until one year later. The order indicated that the penalty would be forgiven if the defendants took certain action, which they failed to take; thus that penalty amount remains owed at this time.

In addition, as a result of an order dated May 21, 1986, a $1,000.00 daily penalty was assessed commencing on May 28, 1986, and terminating when the homes were removed. The Court (Nadeau, J.) hoped the drastic increase in the amount of the daily penalty would force compliance with the Court's

previous orders, but it did not. The order remained in place from May 28, 1986 until May 22, 1990, the day the homes were removed from the property. The $1,000.00 penalty remained in effect for 1,453 days; meaning that the amount of the penalty for that four-year period is $1,453,000.00.

In its final order of July 20, 1990, this Court concluded that due to the particularly egregious nature of the contempt and the failure to voluntarily remove the homes at any time by the defendants, the penalty of $1,000.00 a day was justified. The Supreme Court in its remand order has asked the Court to reconsider the penalty in light of the circumstances as they now exist, which the Court will do herein.

The defendants argue that they have been punished enough. They had to stand by and watch the

homes be forcibly removed from their property. They conclude that by having the homes removed and by getting their attorney fees and costs reimbursed, the Town has been made whole and, therefore, no further penalty should be addressed. The Court disagrees. Were the Court to adopt the defendants' thinking on this issue, then it would be condoning the willful violation of its long-standing orders with respect to the removal of those homes. It would demean the integrity of the Court, and would constitute an open invitation to any person to ignore court orders and fear no reprisal other than an assessment of the prevailing parties' legal fees. Clearly, that cannot be allowed.

While this Court can justify its increasing the daily penalty from $50.00 to $1,000.00 at the time of its May 26, 1986 order, it finds that when said order was made,

the Court could not have anticipated that the penalty would rise to nearly 1.5 million dollars before the homes were removed.

Presumably because the Supreme Court did not know the financial condition of the defendants, it remanded the issue of what an equitable penalty should be in light of the defendants' current assets and liabilities. The plaintiff has submitted a report of the defendants' assets as they appear in the public records. Those records reflect that the defendants have assets of over one million dollars. The defendants have submitted a report of their financial position to the Court in camera, and while the Court will not breach the confidence of the defendants by sharing the specifics of that information with the plaintiff, suffice it to say they agree they have assets in excess of one million dollars.

In view of the fact that the defendants do have substantial assets, it can be argued that a penalty of 1.5 million dollars, while constituting an amount in excess of the defendants' assets, is not extraordinarily high. Still, the punishment should fit the crime, and considering the defendants' finances, a penalty of 1.5 million dollars is not warranted or reasonable. Admittedly, when this Court affirmed the penalty of 1.5 million dollars in its July 20, 1990 order, it did so without any knowledge of the defendants' assets. Upon reflection, the Court hereby reduces the daily penalty for noncompliance from $1,000.00 to $100 for the four years in question. Thus, the Court reduces the penalty portion of the defendants' financial obligation from $1,453,000.00 to $145,300.00 for the time period May 28, 1986 through May 22, 1990. When the earlier penalty amount of

$38,500,00 is added, the defendants' total financial penalty payable to the Court becomes $183,850.00.

At the hearing, the defendants reminded this Court that the last detailed Supreme Court opinion that was rendered in their case, to wit, The Town of Nottingham v. Robert A. Bonser, et al, 131 N.H. 120 (December, 1988), stated that it was not the proper business of municipalities to profit from violations of their land use regulations, nor was it the proper business of the judiciary to allow them to do so. They suggest, therefore, that the Town should have set in motion all that had to be done for a forced removal of those homes at an earlier date. Had the Town done so, then the amount of days wherein the penalty was assessed would have been greatly reduced.

The court cannot penalize the Town for waiting

until May of 1990 to take the drastic action that it did. The defendants continually appealed court orders which made the Town reluctant to act while any facet of this litigation was on appeal. Moreover, the Town recognized that if it had to forcibly remove the homes, then tenants would have to be evicted and that type of radical solution should only be looked to as a last resort.

The Town also correctly points out that it was not until the Supreme Court opinion in December of 1988 that informed it that a radical removal of the homes was appropriate and authorized under the circumstances. The Town then set in motion procedures to get the necessary authorizations to forcibly remove the homes; however, that was not accomplished until May of 1990 because of the various tactics used by the defendants to delay such a removal order. Thus the defendants

find themselves in the untenable position of having to argue that on the one hand the Town should have forcibly removed the homes at an earlier date while having to face the stark reality that the long delay was as a direct result of their resistance and legal maneuvering. For these reasons, the Court cannot find that the penalty period was excessive.

Even if it can be argued that the penalty sanction should not be tied into the period of time between Judge Nadeau's 1986 order and the removal of the houses in 1990, the plain fact is that a punitive fine of less than $200,000 in a case lasting 12 years with numerous incidents of contemptuous behavior on the part of the defendants cannot be said to be unreasonable or unjust, particularly when the defendants have assets in excess of one million dollars.

A review of the financial information supplied to the Court indicates that the defendants have the financial ability to pay all that has been assessed against them in terms of both attorneys fees and related expenses due the Town of Nottingham and in terms of the penalty sanction due the Court. Admittedly, the defendants will probably have to sell a portion of their real estate or mortgage it in order to get the funds necessary to pay the amounts ordered. Nonetheless, that burden is not unreasonable to impose in light of the fact that it was the defendants' own knowing and long-standing actions that have caused them to incur the financial obligations imposed upon them this date.

To the extent that the defendants are desirous of appealing the within order to the Supreme Court, the financial obligations imposed will be stayed pending the

Supreme Court's consideration of the appeal, assuming the appeal is properly perfected and assuming the case is taken by that Court. However, as in the case of any final judgment, interest on both the amount due the Town and the Court shall begin to accrue this day at the statutory rate until the matter is terminated and the amounts paid, unless, of course, the within order is reversed on appeal.

So ordered.

DATED: June 14, 1993

[Kenneth R. McHugh]

Kenneth R. McHugh

Presiding Justice

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY SUPERIOR COURT

TOWN OF NOTTINGHAM

V.

ROBERT A. BONSER and

CEDAR WATERS VILLAGE, INC.

Docket No. E-438-81

FINAL ORDER

This Court issued its last detailed order on April 19, 1990. In that order, clear directives were set out for the removal of all of the mobile homes that had been found to be in violation of the Town of Nottingham's Zoning Ordinance. The defendants took an appeal from that order to the New Hampshire Supreme Court and that Court issued an unpublished opinion dated May 2, 1990, which denied that appeal. In fact, all of the

homes found in violation of the ordinance were removed during the month of May, 1990. In accordance with this Court's April 19, 1990 order, the homes were relocated on town property where they were to remain until July 1, 1990. After that date, if the homes were not removed by the defendants or the tenants that owned them, the Town was free to dispose of them as it saw fit.

In the Supreme Court's May 2, 1990 order, it stated that it would accept no further appeals from any of the parties until after this Court issued a final order, which would include a determination of all fines and attorneys fees. It also stated that all issues arising between its May 2, 1990, order and this Court's final order could be the subject of an appeal, but only after the final order was issued. This Court will now enter a final order from which any party can appeal.

As a preliminary matter, the Town of Nottingham takes the position that this Court is only empowered to hear the fines and attorney fees issues and no other issues. The Town arrives at that position by closely examining the wording of the Supreme Court's directives dated March 2, 1990, and May 2, 1990. While certainly those directives have limited this Court's authority to some extent, this Court still believes it has the authority to hear any pending motion on any issue subject to the appeal of either party. Accordingly, the within final order will contain rulings on all pending motions as well as addressing of the fines and attorney fees issue.

The Court notes that the notice that was sent to all interested parties scheduling a hearing was dated June 28, 1990, and set as the hearing date, July 13, 1990. Unfortunately, that notice indicated that the

hearing would concern the amount of fines and penalties from the inception of this litigation. It did not indicate that any pending motions would be heard and indeed, only one motion was pending when the notice was sent. The Town, therefore, took the position that the other motions that had been filed should not be the subject of the July 13 hearing. The Town did, however, have an opportunity to respond in writing to the motions filed and cannot claim surprise. Accordingly, even though the notice did not mention the hearing would encompass the motions filed, the Court will address those motions in an effort to make this final order complete and appealable by both parties.

Although the notice of the hearing did clearly state that its subject matter would involve the amount of fines and penalties, the Town did not submit a detailed

affidavit reflecting the amounts claimed until the day of the hearing, to wit, July 13, 1990. The defendants objected to the Court's consideration of the specifics of the Town's affidavit because of their inability to review the affidavit at length prior to the hearing. Under some circumstances that request might be meritorious; however, as the hearing progressed and the defendants were given an opportunity to expound on their reasons why they should pay no fines or penalties, it became clear to the Court that their position was not that the amounts claimed were in error, but rather that, no matter what amounts were claimed, they should not have to pay anything except perhaps a token sum. That being the case, this Court finds that no further hearing need be held on the specifics of the Town's affidavit. At the July 13, 1990, hearing, the defendants had full

opportunity to set forth their allegations as to why there is no legal basis to award the Town any money on any of the categories set forth in their affidavit. Moreover, the Supreme Court in its May 2, 1990, directive indicated that it would consider no appeal until a final order had been made on all issues which would include the determination of fines and attorney fees. There is no reason to further delay the appeal rights of either party. The Town's affidavit is sufficiently detailed to enable the Court to review it and pass upon its reasonableness without further hearing.

The Court will now review all of the pending motions in chronological order that have been filed since the Court's last order dated April 19, 1990.

Motion to Impound Evidence of Destroyed Mobile Homes

On June 27, 1990, John A. Settle Jr. and Terry Bonser jointly filed the above entitled motion. In that motion, they claim joint ownership of one of the homes that was removed from the Bonser property. They request that the home remain in its present location on town land until after the lawsuit that they will be bringing against the Town of Nottingham and the mover that relocated the home is decided. It will be their claim in the lawsuit that the home was destroyed by the relocation of it from the Bonser property to town land. They want the jury to see the condition of the home after it was moved. They feel that any further moving of that home would jeopardize their case. They further request that the Town protect the home from further damage by either guarding it or putting a fence around it.

The Town first raises a procedural objection to that motion. It wants some proof as to the ownership of the home in question as between John Settle and Terry Bonser. While legal ownership of that home is cloudy at best, the Court did give both Mr. Settle and Mr. Bonser an opportunity to address it on the pending motion because both have claimed some ownership in the home, and apparently at one point in time, both were listed on the town tax records as having an interest in the home.

It is the position of the Town that in light of the history of this litigation from its inception nearly ten years ago and the blatant refusal of the defendants and other interested parties to follow numerous court orders, that in fact, the town should not have to shoulder any more of the financial burden than it has has already had

to shoulder in respect to these mobile homes. The Town, therefore, does not want to either guard or protect these homes any further. It wants to be able to dispose of them since the defendants and/or tenants have had ample opportunity to remove them from their present location.

The Court agrees that the history of this litigation does not warrant saddling the Town with any further expenses concerning these homes. Moreover, the Court feels that the Town should have the right to use its land in any way it sees fit and, therefore, the Court will allow the Town to dispose of these homes on or after September 1, 1990. The Court recognizes that it has arbitrarily extended the date for the disposal of these units from July 1 to September 2, but the Court feels that it has good reason to do so. The defendants

and/or tenants have until September 1 to make arrangements to either photograph or videotape the present condition of these homes on the town's land. The Town shall cooperate in enabling them to do so, without hindrance. The Court will also give the owners and/or tenants the right to arrange for the movement of these homes on their own until September 1. Thereafter, any homes remaining on town land may be disposed of by the Town in any way it sees fit.

The Court wants to make it clear, however, that all financial responsibilities that the Town had in protecting these homes ended on July 1. Therefore, although the Court is allowing the homes to remain on town land an additional two months, the Town shall have no expenses with respect to these homes. The primary reason for the extension of time is to enable the

owners and/or tenants to gather any pictorial evidence that they feel they need for their litigation so that they cannot argue in any future lawsuit that their rights to memorialize the condition of the homes after the removal to town land was denied them.

The motion to impound evidence is denied. There is no legitimate reason to deprive the Town from clearing these unwanted homes from its property when the only reason for this request to have them remain there is to retain their ability to be viewed in future litigation. The proposed lawsuits might take years to come to trial and their present appearance can be adequately preserved by other means.

Town's Petition to Attach with Notice

On July 3, 1990, the Town of Nottingham filed a petition to attach with notice. In that petition, it seeks to

attach various individuals or entities, real estate and personal property in the aggregate amount of two million dollars. The Court will review the petition both in terms of the individuals against whom the attachment is sought as well as the amount of the attachment.

The Town first seeks to attach defendants Robert A. Bonser and Cedar Waters Village, Inc. The Town points out that these entities have been previously found to be in contempt of court and are subject to a fine of $1,000.00 a day as a result of an order by the court (Nadeau, J.) on May 21, 1986. The Town has computed the amount of that fine from the date of the order through the time the last home was removed from the Bonser property and the total amount of the fine is $1,453,000. In light of the fact that there is an actual contempt finding against defendant Robert Bonser and

Cedar Waters Village, Inc. and in light of the fact that the contempt order clearly sets forth the amount of the fine, the Court finds that an attachment in the sum of two million dollars is reasonable as to these defendants.

The Town has also sought to attach an entity known as Cedar Waters Village Partnership and the three individuals in their capacities as partners that constitute said partnership, those individuals being Robert A. Bonser, Mary T. Bonser and Terry L. Bonser. The rationale for the Town's request as to the partnership is simply the fact that after the contempt findings were made against the corporation, the Town attempted to attach the real estate it now seeks to attach and it actually filed a petition to accomplish that purpose. However, prior to a ruling on that petition, the corporation first conveyed the real estate to Robert A.

Bonser and Mary T. Bonser and the following day, those individuals conveyed the property to Cedar Waters Village Partnership. Those conveyances are the subject of a fraudulent conveyance lawsuit which is currently pending and which has been given the Rockingham County Superior Court No: 87-E-657. It is the Town's position that pending a decision in the fraudulent conveyance action, it is entitled to attach the partnership since it is the partnership that holds the current title to the real estate. Again, in light of the litigation and past history of these parties, such a request is reasonable. The Court, therefore, grants the Town's petition to attach the real estate and other items set forth in its petition as against all of the named defendants in the petition. The Court finds that the appropriate statutory criteria has been satisfied so as to allow such an

attachment to be made.

The objection of the defendants to the Town's petition to attach is basically two-fold. First, as to the partnership, they feel that no attachment is warranted since there has been no finding of contempt against either the partners individually or the partnership as an entity. While that may be true, sufficient evidence has been put on the record to reflect the possibility of a fraudulent conveyance and, therefore, justice requires that the Town be given the right to attach as security for its ultimate claims.

The defendants also argue that a two million dollar attachment is wholly unwarranted because of the illegality of the major component of that attachment request, namely, the assessment of fines at the rate of $1,000 per day since May of 1986. It is the

defendants' position that those fines are patently unreasonable and cannot be used to justify an attachment. The Court disagrees.

The Court also notes, as the Town has pointed out, that every day that goes by without an attachment being recorded may have the effect of continuing to weaken the Town's security because various tenants have sued the defendants and have obtained attachments on the real estate in question. Moreover, without an attachment, the possibility exists that the property could be transferred again to some third party over which the Town would have no control. The Town has also submitted some evidence that the value of the real estate is less than the amount of the fines currently levied which all the more justifies an attachment.

The defendants' position that they are entitled to a jury trial on the issue of fines has been raised in the other motions filed and will be ruled on later in this order.

Motion to Dismiss - Robert A. Bonser and Cedar Waters Village, Inc.

On July 6, 1990, the defendants filed a motion to dismiss claiming first that they had a right to a jury trial because the sum claimed by the town exceeded $1,500; and secondly, they were entitled to have the within lawsuit dismissed because of the language of the Supreme Court's last published opinion. The issue of whether or not the defendants are entitled to a jury trial on the amount of the the fine shall be addressed herein in connection with another motion filed.

As the defendants are wont to do, they have selectively quoted a portion of the Supreme Court's December 9, 1988, decision, which they feel supports their position that the Town is precluded from recovering any fines at this time. In Town of Nottingham v. Bonser, 131 NH 120, at Page 137, the Court said, "It is not the proper business of municipalities to profit from violations of their land using regulations, or the proper business of the judiciary to allow them to do so, if there is any reasonable way to end the violation giving rise to the fines." The defendants point out that the Superior Court, on four separate occasions, issued orders authorizing the Town to remove the mobile homes in question and the Town failed to do so until May of 1990. The defendants, therefore, conclude that since the Town always had the power to remove these homes

and since the Supreme Court admonished the Town from merely allowing the Court ordered fines to accumulate, one must conclude that the fines assessed have no legal basis and, therefore, the lawsuit against these defendants should be dismissed. The defendants supplemented their motion by filing a new pleading on July 13, 1989, in which they allege that since the tenants were given notice to move their homes in 1986 and refused to do so, the defendants, in essence, did all they could to comply with the Court order and, therefore, the fines ordered against them are not now due and owing. The conduct of the defendants vis-a-vis the tenants in the intervening years since this order was issued makes it clear that this so-called notice which the defendants sent the tenants in may of 1986 was nothing more than a hollow gesture designed to show token

compliance with the order. The defendants never made a good faith effort to evict the tenants.

In the Town's objection to the motion to dismiss, it correctly notes that Judge Nadeau's order imposing the fines was never vacated by the Supreme Court. Moreover, in the Supreme Court's published opinion on December 13, 1988, the Court did not eliminate all or any portion of the fines. That opinion, encompassing some 18 pages, contained a detailed review of this litigation. If it was the Court's intention to eliminate the fines, it had every opportunity to so state, particularly in light of the fact that that opinion was critical of the Town in not proceeding fast enough to remove the homes. Nowhere in the opinion is there even a hint that the Court ordered fines, past, present or future, would be vacated. There is no basis for the defendants arguing

that in its December 13, 1988, opinion, the Supreme Court eliminated the Town's right to the collection of any fines because of its failure to remove the homes in a timely fashion. The defendants' motion to dismiss is therefore denied.

Motion to Dismiss - Cedar Waters Village Partnership and Mary L. Parks Bonser

On July 6, 1990. Cedar Waters Village Partnership and Mary L. Parks Bonser filed a separate motion to dismiss. Mary L. Parks Bonser has never been a party in her individual capacity to this litigation and, therefore, while the motion as to her is moot, the Court will grant it anyway and formally note that Mary L. Parks Bonser in her individual capacity is not a named defendant in this litigation.

With respect to the partnership, initially it claimed

a violation of due process in not being named a party to this litigation and consequently, the Court reluctantly allowed them to enter the litigation as a named party. The partnership cannot claim party status for only those issues that are favorable to it. The Court denies the motion to dismiss of Cedar Waters Village Partnership.

As an additional reason for the denial of the motion to dismiss as to the partnership, the Court notes that there is a substantial identity between Cedar Waters Village Partnership and Cedar Waters Village, Inc., which is a named defendant and which is the subject of fines and penalties which have initially been assessed by the Superior Court and affirmed by the Supreme Court. Moreover, there is still the matter of the alleged fraudulent conveyance litigation to be heard. All of these factors demand that Cedar Waters Village

Partnership to be named party in this litigation.

Motion to Dismiss - Town's Noncompliance with Removal Order

On July 6, 1990, the defendants filed the within motion essentially alleging that because the Town hired an unprofessional entity to remove the homes and because the mover destroyed the homes by its unprofessional moving of them, the Town was in violation of this Court's order to retain a competent mover and that violation warrants a dismissal of the Town's action against the defendants. There is no merit to that misplaced logic. The Court finds and rules that the Town did comply with its removal order. To the extent that any of the homes were damaged, then any party with ownership interest in those homes has the right to bring a lawsuit against the Town and/or the

professional mover which it hired. Any damage claims would be properly adjudicated in the context of such a lawsuit. Any alleged failure of the Town or the professional mover to move the homes in a professional manner has no bearing on the Town's right to recover property related fines and penalties. Accordingly, the motion to dismiss because of the Town's alleged noncompliance with the removal order is denied.

Demand for Jury Trial on the Amount of Fines and Penalties from Inception of this Litigation in Excess of $1,500

In this pleading, the defendants and the other named parties argue that constitutional law requires the impanelling of a jury to decide the issue of whether or not under the facts of this litigation, any fines and penalties should be imposed, and if so, in what amount.

PUBLISHER'S NOTE:

Page(s) A141 - A144 missing in original.

The argument essentially is that the Constitution provides for the right of jury trial in matters of controversy exceeding $1,500. The defendants and other parties state very simply that there is a controversy in this case and that the controversy involves sums of more than $1,500 and, therefore, under the Constitution, they are entitled to a jury trial.

While they correctly cited the provisions of the Constitution in terms of the right to a jury trial, there are exceptions to this right, and unfortunately for them, one exception applies here. As the Supreme Court very clearly stated in the case of Bonser v. Courtney, 124 NH 796 (1984), contempt proceedings are not subject to the right to trial by jury. In the case of contempt, the entities against which the contempt finding is issued are notified in advance as to what is expected of them and

are further notified as to what the monetary result will be if they refuse to adhere to the Court orders. Because of that advance notice prior to the implementation of any monetary fine, the Court has held that civil contempt proceedings should be conducted absent the perceived safeguards of a jury. The fines and attorney fees claim in this case are the direct result of contempt findings made by the Superior Court and upheld by the Supreme Court. The defendants and other interested parties knew when the fines and penalties were put in place, what their obligations were, and what the monetary results would be if they failed to comply with these obligations. That being the case, there is no right of jury trial with respect to the fines and penalties sought by the Town in this litigation. Accordingly, the demand for a jury trial on the amount of fines and penalties is

denied.

Motion to Bring Forward Remanded and Other Pending Motions to Dismiss

On July 6, 1990, the defendants filed the within motion. At the hearing held on July 13, 1990, the Court inquired as to what specific motions were pending which were referred to by defendants in this motion. The only motion identified was a motion to dismiss filed by the defendants on August 18, 1987. That motion apparently was the subject of a ruling by Judge Nadeau and the ruling was vacated when Judge Nadeau recused himself from any further involvement in this litigation. This Court has reviewed the substance of that motion which involves a claim that a zoning change by the Town of Nottingham passed after the litigation began would in effect make the mobile homes in question legal, and

finds and rules that for all of the reasons stated in the Town's objection to that motion, it should be denied and is hereby denied.

Ruling on Town's Request for Fines and Penalties

At the hearing on July 13, 1990, the Town submitted to the Court both a summary of amounts claimed as well as an affidavit of town counsel explaining the composition of and justification for said amounts. During the hearing, the defendants and other interested parties took the opportunity to criticize the assessment of the various categories of amounts claimed by the Town and the Court will go through these assessments at this time

Preliminarily, the Town argues that this Court has no authority to pass upon the reasonableness of the fines and penalties claimed by it. The Town points out

that in Judge Nadeau's May, 1986, order, said order never having been vacated, that he states that,

> "After removal of all the mobile homes in question, the Town shall certify to the Court, in affidavit form, the civil penalties which accrued under Paragraph No. 2 of this order and the costs which were incurred under Paragraphs No. 3 and 4. Upon approval of those amounts by the Court, the Clerk of the Rockingham County Superior Court shall forthwith enter civil judgment against the defendants and in favor of the Town of Nottingham and, at the request of the Town, shall forthwith issue an execution."

Said language means that upon the findings of the affidavit, a verdict is entered without further hearing. Again, there is merit to the Town's position; however, a

fair reading of the Supreme Court's May 2, 1990, directive seems to imply that this Court should issue a final order "including the determination of all fines and attorney fees." It is because of that language that this Court will review the contents of this affidavit.

The first component of the Town's claim is fines of $1,000 per day from May 28, 1986, (date of implementation of the contempt order) to may 22, 1990, (date of removal of the mobile homes in question). This time period constitutes 1,453 days. The amount of this claim consequently is $1,453.000. It is this Court's opinion that the fine is both reasonable and the period of calculation correct. The fine is reasonable because there were initially nine mobile homes that had substantial value that were illegally placed on the property of Cedar Waters Village. Having in mind the

number of the homes in violation of the zoning ordinance, this Court cannot say that a $1,000 fine is an unreasonable penalty to assess per day for as long as the homes remained illegally placed on the property in question. The Court notes that at no time did any of the defendants attempt to request a stay in the assessment of the fines to enable them to remove the homes. Their response to the assessment of the fine was complete defiance which never changed until the homes were forcibly removed in May of 1990. Under the conditions of this litigation, the Court finds and rules that the assessment of total fines in the sum of $1,453,000 is reasonable and order that assessment to be paid to the Town. The defendants argue that if such an assessment is allowed to stand, then, in effect, their property will have been fully taken. While that may be

true, they cannot argue they did not know what the potential consequences of their defiance would be. They knew from May of 1986 that every day they failed to comply with the court orders, their monetary interest in the property was decreasing. Yet the defiance continued unabated for four years.

In its summary, the Town has claimed an amount of $41,400.44 for the removal of the homes pursuant to this Court's order and related expenses. That claim is detailed in the affidavit filed by the Town and supported by attached documentation. The court has reviewed the components of the sum claimed and finds them reasonable. Inasmuch as the costs of the removal were incurred solely because of the willful violation of the defendants to abide by prior Court orders and remove the mobile homes themselves, these removal costs

should be fully borne by the defendants and the Court so orders.

The next component of the Town's summary is attorney fees and it has broken that component down into three specific time periods. The Town has credited the defendants with a payment of a portion of those fees from funds that were attached pursuant to an earlier Court order. The court has examined the detailed affidavit of town counsel and rules that the amounts claimed are reasonable and were incurred as a result of the defendants' contemptuous actions and, therefore, orders that all of the attorney fees claimed be awarded to the town and paid by the defendants.

The Town's final component in its summary of amounts claimed is interest as per RSA 524:1-b. In light of the amount of the fines and penalties that the

Court has ordered the defendants to be responsible for, it respectfully declines to order interest be paid and, therefore, the Court denies that component of the town's request.

The court having made its final order respectfully declines to entertain further pleadings in this litigation to be filed by any party. All objections of the within order are preserved and appealable to the New Hampshire Supreme Court.

So ordered.

Dated: July 20, 1990

[Kenneth R McHugh]

Kenneth R. McHugh

Presiding Justice

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In case No. 93-263 Town of Nottingham v. Robert Bonser & a. the court upon April 28, 1993 made the following order:

Motion to quash subpoena duces tecum and motion to continue lower court proceedings are denied. Notice of appeal is declined, see Rule 7 (1), without prejudice to raising the issues in a subsequent appeal either upon conclusion of the entire case in the superior court or by a properly filed interlocutory appeal in accordance with Rule 8.

Distribution:

Rockingham County Superior Court E-438-81

Mr. Robert A. Bonser

Mr. Thomas Dunnington, Jr., Esquire

Mark Gearreald, Esquire

Theresa H. Hayes, Supreme Court

File

Howard J. Zibel

Clerk

A-157

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

ROCKINGHAM, SS MARCH TERM, 1993

E-438-81

Town of Nottingham

v.

Robert A. Bonser, et al

MOTION TO RECONSIDER MARCH 9, 1993 ORDER ON DEFENDANTS' MOTION TO RECUSE AND DISMISS

NOW COME the Defendants and Intervenors (Defendants) and respectfully request that this court Reconsider its March 9, 1993 Order on Defendants' Motion To Recuse and Dismiss, as follows:

1. Defendants except and object to this court ruling on their above motion **without hearing**.

Throughout the history of this matter this court has never ruled on a motion to dismiss without hearing. Defendants have had to waive hearing on even minor motions. This represents a serious departure by the court from the traditional manner of hearings being granted in this case.

2. Defendants incorporate their Motion To Dismiss and Recuse, dated February 3, 1993, by reference, herein, as part of this Motion.

3. Also, Plaintiff filed a timely objection to Defendants motion, raising issues of fact, making hearing an absolute necessity.

4. Further, this court in its order alleges additional facts in its own defense, that Defendants have the right to dispute at hearing.

5. One of the facts alleged by this court is that copies of all communications in this case have, historically and as a matter of procedure, been sent to the Chief Justice. That is absolutely false. This procedure has only been implemented recently, since Judge Nadeau has assumed the position of Chief Justice of the Superior Court and the record proves this.

6. Defendants are purged of any contempt and therefore have the right to a hearing, in fact a jury trial, in this matter and assert that right herein.

7. This court somehow concludes that if it now ceases to send copies of future communications regarding this matter to Chief Justice Nadeau that that would somehow restore your Defendants confidence in Defendants ability to obtain a fair hearing in the Superior Court. If there was no harm done by sending

copies of the last three communications to the Chief Justice, as is alleged by this court, what would the harm be in

sending copies of future communications? If it is wrong in the future, it was wrong in the past. There is an old expression, you can not be "a little bit pregnant". The same is true here, this matter can not be "a little bit contaminated", either it is entirely right to send communications to Nadeau or it is entirely wrong.

8. Due to Judge Nadeau's January 6, 1988 Order and his subsequent involvement, in this matter, as Chief Justice of the Superior Courts, "[t]he appearance of partiality permeates the proceeding" and nothing this court says or does (except dismissing this matter) can nullify or neutralize the immense impact and harm done to your Defendants as a result of the actions of Judge Nadeau. See, George Blaisdell v. City of Rochester,

135 NH, 589 (1992), which Supreme Court Order, together with all arguments of law, are incorporated, by reference, into this Motion, as part of this Motion.

9. Chief Justice Nadeau's public statement (the 1988 Order), of his private opinions, against your Defendants are extremely close to, if not actually, defamatory and Judge Nadeau's failure to abide by a duly executed subpoena, just as he stated, "I...will not appear in response to their subpoenas", was completely unlawful in his proper person and most improper behavior for a judge and evidenced an ability on the part of Judge Nadeau to justify disregarding the law when defending this

imagined "assault mounted on the court" by your defendants. See, January 6, 1988 Order, that is part of this record.

10. The Defendants are not naive and neither is the Supreme Court of New Hampshire. Chief Justice Nadeau is more than "technically this Court's superior", his hand is "on the throttle" of the superior court, and he has already shown that he is capable of disregarding the law when dealing with your Defendants (failure to abide by subpoena to appear at Supreme Court). It is common knowledge and Defendants are aware that as chief justice Judge Nadeau wields incredible power, which can (as with all power) be used adversely against a judge who "falls from grace" or a private person(s) whom Chief Justice Nadeau has publicly declared an aversion to, as being guilty of "undermin[ing]" the very "foundations" of "the court". Your Defendants have absolutely no confidence in their ability to obtain equal justice, the same as anyone else, within the superior court of New Hampshire.

11. Judge Nadeau also failed to abide by the law regarding disclosure of his known familial relationship, which "is the judge's responsibility to disclose", as stated in Blaisedell, supra.

12. Even Plaintiff, in its objection, admits that Chief Justice Nadeau has more than a "technical[ly]" interest in this matter, in fact Judge Nadeau's interest is intensely personal, "first, it is Judge Nadeau's originally imposed...fine that will be considered upon remand". Consequently, Plaintiff has introduced the fact that it is Judge Nadeau's order of fines, that now could be awarded to the court (per Supreme Court Order) of which Judge Nadeau is now the Chief Justice, if any fines are actually awarded; "and second, Judge McHugh is hearing this matter under an special assignment...under the complex assignment policy", of

which Chief Justice Nadeau is now the head (emphasis added).

13. This court is bound by "The Code of Judicial Conduct [which] requires a judge to avoid even the appearance of impropriety and to "conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary". Judge Nadeau's behavior in this matter, by the publishing of the 1988 Order and his failure to abide by subpoena and his subsequent involvement now, seriously erodes the integrity of the judiciary, which this court, by its recent order, has become a party to and the Supreme Court of New Hampshire has made it quite clear that it will not "allow a judge's ruling to stand when those standards have been violated." See, Blaisdell, supra.

14. "Whether an appearance of impropriety exists is determined under an objective standard, i.e.,

would a reasonable person, not the judge himself, question the impartiality of the court. E.g., Liljeberg v. Health services Acquisition Corp., 486 U.S. 847, 860-61 (1987); Home Placement Service v. Providence Journal Co., 739 F. 2d 671, 674 (1st Cir. 1984), cert. denied, 469 U.S. 1191 (1985). "The objective standard is required in the interests of ensuring justice in the individual case and maintaining public confidence in the integrity of the judicial process which depends on a belief in the impersonality of judicial decision making." Scott, 559 A.2d at 749 (internal quotation omitted); see also Liljeberg, 486 U.S. at 864 ("We must continually bear in mind that to perform its high function in the best way justice must satisfy the appearance of justice." (internal quotation omitted)", as cited in Blaisdell. There is no "appearance" of "impartiality" or "impersonality" within the superior court, in this matter, that must exist as a first requirement for Defendants to obtain a fair trial

as guaranteed to Defendants under both the New Hampshire and United States Constitutions.

15. Based on the Supreme Court's Order in Blaisdell and just in taking into consideration Judge Nadeau's published opinion, that leaves nothing to anyone's imagination about Judge Nadeau's biased opinion of Defendants, and in light of Judge Nadeau's appointment as head of the superior court - all the other, very serious, issues aside for the moment - a reasonable person would determine that Defendants are incapable of obtaining equal justice or a fair trial within the superior court. In its opinion the Supreme Court wrote "[t]he defendant next contends that the trial court's rulings, when viewed objectively, were neither biased nor prejudicial, and, therefore, the orders should stand as issued", ...[w]e are not bound by Liljeberg in construing our own Code of Judicial Conduct. In our

opinion, it would be inconsistent with the goals of our code to require certain standards of behavior from the judiciary in the interest of avoiding the appearance of partiality, but then allow a judge's ruling to stand when those standards have been violated". Add all the other serious issues stated above, i.e., Judge Nadeau's failure to abide by subpoena to the Supreme Court, the sudden involvement in this case of Chief Justice Nadeau, Judge Nadeau's personal interests, the denial of due process in determining Defendants' Motion To Dismiss and Recuse, and denial of due process in Defendants' Motion to Reconsider, etc. and it becomes painfully clear that, at the very least, the appearance of impartiality is gone for Defendants and that actually there is absolutely no way for your Defendants to obtain equal justice, the same as anyone else, within the superior court of New Hampshire.

16. By their Motion To Dismiss and Recuse, Defendants raised a serious jurisdictional argument completely unprecedented in New Hampshire history and for this court to make light of it and simply dismiss it without argument or hearing only leads Defendants (or any other reasonable person) to conclude that a partiality does indeed now exist within this court, which violates Defendants State and Federal Due Process Rights.

17. Defendants assert herein the indisputable argument of law, that whereas Judge Nadeau, the court, recused itself from any further involvement in this matter, by virtue of the January 6, 1988 Order, "I am recusing myself from any further participation in these cases...by this order I am notifying the clerks of Superior Court that I will no longer sit on any matter involving Mr. Bonser or his associates", and considering the scope and magnitude of the recusal order - now

that Judge Nadeau is the head of the Superior Court, the (superior) court is now bound by the 1988 Order and is in fact already, actually recused in this matter. It is not that Judge Nadeau simply recused his court, it is the excessive, hostile, personal manner in which the recusal order was made, which automatically precludes even the remotest involvement of Judge Nadeau or any court subject to Judge Nadeau's control ("technical[ly]" or otherwise), in this matter.

18. By the filing of this motion Defendants are not granting jurisdiction to this court, but are merely raising and preserving the issues for eventual appeal.

WHEREFORE, Defendants respectfully request this court recuse and dismiss this matter.

Respectfully submitted,

Date: _____

_____
Robert A. Bonser, Pro Se

CEDAR WATERS
VILLAGE, INC.

_____
Robert A. Bonser, Pro Se

INTERVENORS:
CEDAR WATERS VILLAGE
PARTNERSHIP, PRO SE

BY ALL OF ITS
PARTNERS, PRO SE

_____
Terry L. Bonser, Pro Se

_____
Mary L. Bonser, Pro Se

Robert A. Bonser, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that I have mailed today, first class, postage prepaid, a true copy of the foregoing to Mark Gearreald, Esq., at his address of record.

Date:_____ _____